In the

Supreme Court of the United States

October Term 1964

No. 556

SAKRETE OF NORTHERN CALIFORNIA, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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PETITION FOR REHEARING FROM DENIAL OF PETITION FOR WRIT OF CERTIORARI

Now comes Petitioner in the foregoing cause respectfully requesting rehearing by the Court and reconsideration of denial of its Petition for Writ of Certiorari.*

Obviously the Court did not err in denying a writ of certiorari since the Court has discretionary jurisdiction on the matter. Petitioner submits, however, that the Court acted improvidently in denying its petition when the ques-

*Denial of Petition for Writ of Certiorari was included in the order list of the Court on January 18, 1965 and this Petition is timely filed under Rule 58 of the Court.

tion raised is presently pending before the Court in No. 61, OT 1964.

The Solicitor General in his Brief in opposition indicated to the Court that the only question herein presented was evidentiary and thus not worth the Court's time. Yet, since the filing of the papers in this Court, it has come to Petitioner's attention that the instant case on which the Solicitor General urged denial, due to its evidentiary nature, is being relied on by the Ninth Circuit as the controlling law in the Single Employer area. *Harvey Aluminum (Incorporated)* v. *National Labor Relations Board,* 335 F. 2d 749 (C.A. 9th Cir.) at 757. Moreover, the Government was not in the least bit hesitant to cite the instant case as authority in its Memorandum urging the issuance of a writ of certiorari in No. 61. (See Memorandum for the United States as amicus curiae at pages 4 and 5).

Indeed it seems quite odd that a case cited by the Government for controlling authority is blocked by the Government from decision while the controlled case (No. 61) is heard.

Whether the denial in the present case was based on the Government's incorrect assertion that the question was concluded as an evidentiary matter or whether the question herein presented and now pending in No. 61 is not fully understood by the Court is solely a matter of conjecture.

In either case it would appear clear that denial in the present case automatically, if casting any light on No. 61, as the Government's Memorandum in No. 61 suggested it did, requires, in the interest of consistency, a holding for Petitioner in No. 61.

We submit that such is not correct law and that the present case should be considered by the Court.

The Court will note that in our Brief we have in several instances challenged the Solicitor General's characterization of this case as presenting only evidentiary questions

and have indicated (as yet not controverted at any point) that jurisdiction has been allowed to stand where no evidence of any effect on commerce was introduced. It now appears obvious that the Ninth Circuit will willingly follow this pattern wherever possible.

While we would hope that it does not happen, we would predict that like a bad penny the holding below in this case will keep coming back in the Government's arguments in various cases to enlarge federal jurisdiction where it does not and should not exist.

For the foregoing reasons Petitioner respectfully requests the Court to reconsider its previous action and to grant certiorari in the present case.

February 4, 1965

Respectfully submitted,

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